

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8213 OF 2007

Nathu Sakharam Bailkar

& Ors. .. Petitioners.

vs.

State of Maharashtra

& Ors. .. Respondents.

Mr. H.S. Venegavkar for Petitioners.

Mr. A. H. Palekar, AGP., for respondents.

CORAM: J.N. PATEL &

A.A. SAYED, JJ.

DATE: 2ND NOVEMBER, 2007.

P.C.

. The petitioners have approached this Court seeking a writ of mandamus against respondent nos. 1 and 3 to issue a government resolution giving orders to the authorities to promote an employee of Class IV cadre from peon to the post of Driver of Class III cadre.

2. Such a relief is sought in the back-drop that the petitioners are employed as Peons in the office of

the respondent no. 2 but their services are utilised as drivers. It is their contention that the advertisement came to be published on 15.10.2007 which is annexed to the petition as Exhibit F inviting applications for the post of drivers but the petitioners are not qualified as they have crossed the age limit prescribed in the advertisement. It is contended that as they are in service and it is a normal practice of the respondents to give opportunity to Class IV employees to improve and to consider for promotion to higher post there is no reason why the case of the petitioners should not be considered for the post of Driver which is a Class III cadre by giving them relaxation in the age.

3. It is submitted that in past there has been various instances where Peons have been promoted as drivers and clerks by the respondents.

4. It is further contended that the petitioners case is also for active consideration of respondent no. 2 Collector by regularising them on the post of Drivers considering their past record and the fact that their services have been utilised as Drivers though they have been appointed as Peons.

5. The learned AGP., submits that as there is no provision in the Recruitment and Service Rules, which make the petitioners eligible for such consideration

nor such relaxation is given in the age of 'in-service' candidates, such a relief cannot be granted as sought for by the petitioners i.e. to direct the State Government to issue a necessary G.R. to suit the requirement of the petitioners.

6. In reply it is the contention of the learned counsel for the petitioner that at least the Collector should take a decision in the matter of relaxation of the petitioners which is pending with them so that the petitioners would be made aware of their fate.

7. In so far as the relief sought in the petition is concerned, that the petitioners are not in a position to place on record any statutory right vested in them for being considered for the post of drivers by relaxing the age limit, we will not be in a position to permit them to apply for the post by directing the respondents to consider their case. In so far as the reliefs sought for by the petitioners that this Court should direct the Government to issue a G.R. on similar lines is out of question as this Court cannot exercise its writ jurisdiction for issue of mandamus for such purpose.

8. This Court disposes of this petition with the direction to respondent no. 2 to take a decision in the matter of regularisation of the petitioners to the post of drivers if it is under his active consideration

within a period⁴ of six months from the date of
communication of this order by the petitioners.

9. C.C. expedited.

(J.N. Patel, J.)

(A.A. Sayed, J.)